

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE SPRIZZO

CARBON CAPITAL II, INC.,

Plaintiff,

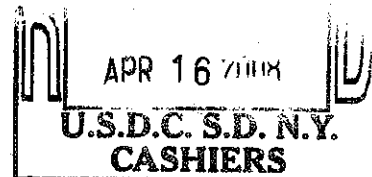
-against-

ROYAL PALM SENIOR INVESTORS, LLC and GUY T.
MITCHELL,

Defendants.

08 CV 3660
08 Civ.

NOTICE OF REMOVAL



TO: Hon. Norman Goodman
NEW YORK COUNTY CLERK
New York County Courthouse
60 Centre Street, Room 161
New York, New York 10007

SIDLEY & AUSTIN LLP
Attorneys for Plaintiff
787 Seventh Avenue
New York, New York 10019

Pursuant to 28 U.S.C. §§ 1441 and 1446, and other applicable laws, you are hereby notified that defendants Royal Palm Seniors Investors, LLC ("Royal Palm") and Guy T. Mitchell, appearing specially and for the sole purpose of effecting removal to this Court, state that they have removed this action entitled "Carbon Capital II, Inc. v. Royal Palm Senior Investors, LLC and Guy T. Mitchell," bearing Index No. 600984/08 (the "Action"), from the Supreme Court of the State of New York for the County of New York, to the United States District Court for the Southern District of New York.

Pursuant to said removal, and in accordance with the provisions of 28 U.S.C. § 1446(d), the Supreme Court of the State of New York should proceed no further with this matter. Your attention is specifically directed to Section 1441 *et seq.*, Title 28, United States Code, as amended.

In support of this removal, defendants state as follows:

1. On or about April 3, 2008, plaintiff Carbon Capital II, Inc. ("Carbon Capital") commenced the Action by filing a Complaint in the Supreme Court of the State of New York, which is a state court within this judicial district. Defendants are the only defendants in the Action. This suit is an action by sole plaintiff Carbon Capital for a declaratory judgment that Carbon Capital, and not Royal Palm, is the managing member of the Royal Palm Hotel in Miami Beach, Florida, allegedly by operation of an agreement between the parties. Carbon Capital also seeks injunctive relief barring defendants from taking any acts to the contrary.

2. In accordance with 28 U.S.C. § 1446(b), this Notice of Removal is timely filed, having been filed within thirty (30) days of the day on which defendants received notice of the Action. A copy of the state court file is set forth in the accompanying Exhibit A to this Notice of Removal.

3. Defendants base this removal on diversity of citizenship pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 1441 (a), (b) and (c).

4. Nothing in this Notice of Removal shall constitute, or be construed as, a waiver or relinquishment of the right of defendants to assert any defenses available to it, including, but not limited to: (1) lack of personal jurisdiction; (2) improper venue; (3) failure to state a claim upon which relief can be granted; or (4) any other pertinent defense.

I. Diversity Jurisdiction

A. Residency of Parties

5. Carbon Capital alleges that it is a Maryland corporation, having its principal place of business in the State of New York. Ex. A., Compl. ¶ 2.

6. Royal Palm is a limited liability company organized and existing under the laws of the State of Delaware, having its principal place of business in the State of Florida.

7. Mitchell is a citizen and resident of the State of Florida.

B. Amount in Controversy

8. The amount in controversy between Carbon Capital and defendants exceeds the sum or value of Seventy-five Thousand and No/100 Dollars (\$75,000.00), exclusive of interest and costs. Ex. A., Compl. ¶ 10.

II. Written Notice To All Parties and Filing in State Court

9. Written notice of the filing of this Notice of Removal is being served on counsel for Carbon Capital. A copy of this Notice of Removal will be filed with the Clerk of the Supreme Court of the State of New York.

WHEREFORE, defendants pray that the above entitled state court action, now pending in the Supreme Court of the State of New York, be removed to the United States District Court for the Southern District of New York.

ARNOLD & PORTER LLP

By: 

H. Peter Haveles, Jr.

Jonathan N. Francis

399 Park Avenue

New York, NY 10022

(212) 715-1000

Peter_Haveles@aporter.com

Attorneys for Defendants